

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of B.L. HALL, Minor.

UNPUBLISHED

January 23, 2014

No. 316706

Wayne Circuit Court

Family Division

LC No. 11-503608-NA

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Before: STEPHENS, P.J., and M. J. KELLY and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), (h) (parent imprisoned and child will be deprived of home for two years), and (j) (reasonable likelihood child will be harmed if returned to respondent).<sup>1</sup> We affirm.

**I. FACTUAL BACKGROUND**

The minor's mother was hospitalized during her pregnancy, and tested positive for heroin and cocaine. There were allegations that respondent was the person supplying her with drugs. When the minor child was born, she tested positive for heroin and cocaine and for herpes, an infectious disease. The minor had to stay in the hospital for five weeks after her birth, and returned periodically for medical treatment. She experienced severe withdrawal symptoms that resulted in seizures, which doctors indicated may have long term effects on her health and development. While the baby was still in the hospital, petitioner filed a petition requesting that the baby be placed as a temporary ward of the court. The court authorized the petition and took jurisdiction over the child. For the majority of these proceedings, the baby was placed in foster care.

Respondent was subsequently identified as the biological father, and became the legal father during the pendency of these proceedings. However, respondent was incarcerated when the child was approximately three months old. Respondent never visited the child before he was incarcerated nor provided financial support for her. He also had a history of incarcerations and

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<sup>1</sup> The mother voluntarily released her parental rights, and is not a party to this appeal.

had absconded from parole several times. He had a 20-year history of substance abuse, and admitted to using crack cocaine, acid, heroin, and marijuana. While respondent also admitted to using heroin with the mother while she was pregnant, he denied that he supplied her with drugs or that he had ever sold drugs. He admitted that he owed over \$60,000 in child support for another one of his children and that he had not had a job outside of prison since 2008.

The foster care worker testified that when respondent was released from prison, he would need to obtain a psychological evaluation, individual therapy, complete substance abuse program, parenting classes, obtain suitable housing and a legal source of income, and visit with the child. She also testified that respondent had not verbalized to her any type of plan he had for the child, and that the baby was thriving and developing in foster care. While respondent believed that he could be released from prison in early 2014, he also acknowledged that his maximum release date was in 2016.

Ultimately, the trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), (h) (parent imprisoned and child will be deprived of home for two years), and (j) (reasonable likelihood child will be harmed if returned to respondent). The court also found that termination was in the child's best interests. Respondent now appeals.

## II. STATUTORY GROUNDS FOR TERMINATION

### A. STANDARD OF REVIEW

We review for clear error a trial court's determination that a statutory ground has been proven by clear and convincing evidence. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

### B. MCL 712A.19b(3)(g)

The trial court in the instant case did not clearly err in finding that there was clear and convincing evidence to terminate respondent's rights. Pursuant to MCL 712A.19b(3)(g), the court may terminate a parent's rights to a child if the court finds by clear and convincing evidence that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

Here, respondent failed to provide proper care and custody for the minor child during her entire life. The allegations in this case involved respondent knowingly supplying the mother with drugs while she was pregnant.<sup>2</sup> While respondent admitted to using heroin with the mother while she was pregnant, he denied supplying her with the drugs and claimed that he requested

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<sup>2</sup> The foster care worker admitted that these were just allegations.

she not use them. The foster care worker, however, testified that respondent and the minor's mother had a long history of substance abuse, including selling drugs together and living in any vacant house they could find. Respondent denied that he had ever sold drugs, but admitted to significant usage. He had a 20-year history of substance abuse, and was presently incarcerated for failure to pay child support, attempted unarmed robbery, attempted second-degree home invasion, and related parole violations.

Because of the mother's drug use, the child was born with heroin and cocaine in her system, and was hospitalized for five weeks after birth for severe withdrawals from the drugs and seizures. During this five week period, respondent did not visit the child in the hospital. Before the termination hearing, respondent admitted that he could not care for the child due to his incarceration. He never provided any financial support to the child over the course of her life. According to the foster care worker, respondent never once inquired about the child during their communications. He also had a history of failing to support his other children, and had a child support arrearage of \$60,000 relating to a different child. He further admitted that he had not held a job since 2008.

Given respondent's long history of drug abuse, repeated incarcerations and violation of parole, and failure to emotionally or financially support the child, there was clear and convincing evidence that he failed to provide proper care or custody of the child. MCL 712A.19b(3)(g).

Furthermore, the evidence supported the trial court's finding that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the child's age. MCL 712A.19b(3)(g). While respondent focuses on his earliest release date from prison allegedly in May 2014, that is a mere possibility. His maximum release date is in 2016. Further, the child has never even met respondent,<sup>3</sup> and the foster care worker testified that respondent would still need to complete significant services before he would even conceivably be a suitable parent. These services included a substance abuse program, parenting classes, therapy, and obtaining suitable housing and a legal source of income. In light of this evidence, it cannot be said that the trial court clearly erred in finding that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the child's age. MCL 712A.19b(3)(g).<sup>4</sup>

### III. BEST INTERESTS

#### A. STANDARD OF REVIEW

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<sup>3</sup> Regardless of whether the child's relatives warned respondent not to visit, the fact remains that he has never met the child and has no bond with her. Further, respondent admitted that he never attempted to call or arrange to see the child.

<sup>4</sup> Because only one statutory ground for termination need be established, we decline to address the alternate grounds for termination. *Olive/Metts*, 297 Mich App at 41. Petitioner also concedes that MCL 712A.19b(3)(h) was not a proper ground for termination.

Respondent also challenges the best interests finding, which we review for clear error. *In re Olive/Metts Minors*, 297 Mich App at 40. “A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.” *In re Hudson*, 294 Mich App at 264.

## B. ANALYSIS

The trial court did not err in its best interests analysis. The finding that termination is in the best interests of the child must be proved by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The court may consider the child’s bond to the parent, the need for permanency, stability, and finality, *In re Olive/Metts*, 297 Mich App at 41-42, as well as a respondent’s history, psychological evaluation, and parenting techniques, *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

In the instant case, respondent contends that the court improperly based its finding solely on the doctrine of anticipatory neglect.<sup>5</sup> The record does not support this contention. The trial court considered respondent’s long history of substance abuse, disregard for the law, the child’s developmental needs, the foster care environment, the lack of respondent’s relationship with the child, and the child’s need for permanency. These findings were supported by the record, and were based on the current situation of the child and respondent’s present limitations.

It is undisputed that respondent never met the child, and, thus, had no bond or relationship with her. The foster care worker also testified that respondent had never even inquired about the child’s well-being. The minor also had medical needs, although her health had significantly improved, and the foster care worker testified that respondent had not communicated any type of plan for the child’s care. The child was in a foster home where she was thriving and developing appropriately, with foster parents willing to adopt her. Furthermore, while respondent may wish otherwise, his criminal and substance abuse history was relevant, especially in light of the reality of his recidivism relating to drug abuse.

The court ultimately found that, based on the present reality and the above-cited reasons, the child’s dire need of permanency was of paramount importance. Even on appeal, respondent does not appear to recognize the needs of the child. He states that “[i]t was extremely improbable that [the] 20-month old [child] was pining for permanency and anxious not to be put off any longer in her suitable, nurturing and appropriate foster home where she was blossoming, developing extremely well, and very much bonded with her foster parents.” He counters instead that, “[i]f anyone was pining and anxious in [the child’s] foster home, it would be [her] foster parent(s).” Not only are such assertions unsupported by the record, respondent has failed to cite to any support for the conclusion that a 20-month old child does not need stability or finality, or that taking her from a stable and loving foster home to be placed with respondent, who she has never met, was somehow in her best interests.

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<sup>5</sup> “The doctrine of anticipatory neglect recognizes that how a parent treats one child is certainly probative of how that parent may treat other children.” *In re A H*, 245 Mich App 77, 84; 627 NW2d 33 (2001) (quotation marks, brackets, and citation omitted).

The trial court properly found that termination was in the child's best interests, and did not base its decision solely on anticipatory neglect.

#### IV. CONCLUSION

The trial court did not clearly err in terminating respondent's parental rights pursuant to MCL 712A.19b(3)(g), or in finding that termination was in the child's best interests. We affirm.

/s/ Cynthia Diane Stephens

/s/ Michael J. Kelly

/s/ Michael J. Riordan